

FCC MAIL SECTION

Before the  
Federal Communications Commission  
Washington, D.C. 20554

SEP 21 1 00 PM '93

MM Docket No. 93-244

DISPATCHED BY

In the Matter of

Amendment of Section 73.202(b), RM-8315  
Table of Allotments,  
FM Broadcast Stations.  
(Pike Road, Alabama)

## NOTICE OF PROPOSED RULE MAKING

Adopted: August 31, 1993; Released: September 21, 1993

Comment Date: November 15, 1993

Reply Comment Date: November 30, 1993

By the Assistant Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed on behalf of Fred R. Hughey ("petitioner") requesting the allotment of FM Channel 248A to Pike Road, Alabama, as that community's first local aural transmission service. Petitioner stated his intention to apply for Channel 248A, either individually or as an entity of which he is a part, if it is allotted to Pike Road, as requested.

2. Petitioner states that Pike Road is an unincorporated community, located at the intersection of State Highways 40 and 85, in eastern Montgomery County. Further, petitioner advises that there are road signs on U.S. Highway 231 indicating the direction to Pike Road, and provided a photograph to substantiate his claim. Petitioner also advises that although Pike Road has no local government, it does maintain a volunteer fire department and has a community library, a locally supported softball park, an elementary and a high school, churches and business establishments. Additionally, petitioner states that Pike Road has a post office, its own zip code, and telephone exchange. Among the photographs submitted by the petitioner in support of his proposal were those of several business establishments, the Pike Road Community Club and the Pike Road substation of the "East Montgomery Water, Sewer & F.P.A." Moreover, petitioner advises that the 1990 U.S. Census

attributes the Census Division of Pike Road with a population of 4,278 persons. Petitioner also acknowledges that the Rand McNally Commercial Atlas attributes Pike Road with a population of 200 people.<sup>1</sup>

3. Section 307(b) of the Communications Act of 1934, as amended, requires that the Commission allot channels "... among the several States and communities." The Commission has defined "communities" as geographically identifiable population groupings. Generally, if a community is incorporated or listed in the U.S. Census, that is sufficient to satisfy its status. In light of the fact that Pike Road is not ascribed with a separate population listing in the 1990 U.S. Census but rather the population attributed to it therein is that of the Pike Road Division of Montgomery County,<sup>2</sup> we believe the petitioner should present the Commission with additional demographic information regarding Pike Road to demonstrate whether it contains other indicia of a community such as a newspaper, social, economic or cultural organizations, municipal services, or governmental units that identify themselves specifically with that locality.<sup>3</sup>

4. We believe the petitioner's proposal to provide Pike Road with its first local aural transmission service, should it ultimately be deemed a community for allotment purposes, warrants further consideration. Therefore, we invite comments on the proposal, as indicated *infra*.

## Engineering Analysis

5. Channel 248A can be allotted to Pike Road consistent with the minimum distance separation requirements of Section 73.207(b)(1) of the Commission's Rules provided the transmitter therefor is located at least 13.6 kilometers (8.2 miles) southeast of the community at coordinates 32-10-00 and 86-05-00, to avoid a short spacing to Station WZLM(FM), Channel 247A, Dadeville, Alabama, at coordinates 32-52-58 and 85-49-16, and to Station WKKR(FM), Channel 249A, Auburn, Alabama, at coordinates 32-37-19 and 85-30-05, as well as to vacant Channel 250A, Wetumpka, Alabama, at coordinates 32-28-23 and 86-09-22, for which applications are pending.<sup>4</sup>

6. In view of the above, we believe it is appropriate to solicit comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to Pike Road, Alabama, as follows:

City	Channel No.	
	Present	Proposed
Pike Road, Alabama	--	248A

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix

<sup>1</sup> Although Pike Road is listed in the Rand McNally Commercial Atlas, its mere geographical location is not sufficient to establish "community" status. See *Vimville, Mississippi*, 48 FR 5974 (1983), and *Hannibal, Ohio*, 6 FCC Rcd 2144 (1991).

<sup>2</sup> According to U.S. Census information, a census county division ("CCD") is a geographical area that has been delineated for the purpose of gathering data for inclusion in the Census. Further, the Census Bureau defines a CCD as having no legal function nor is it a governmental unit. Moreover, the boundaries of a CCD are usually delineated to follow visible features and in most cases coincide with census tract or block numbering area boundaries. Additionally, CCD's are named based on a

place, county, or familiar local name that identifies its location. Cf. *Hollywood and California, Maryland and King George, Virginia*, 3 FCC Rcd 4043 (1988) (area comprised of collective Census Enumeration Districts "CED's" does not constitute a single community for allotment purposes).

<sup>3</sup> See, e.g., *Ansley, Alabama*, 46 FR 58688 (1981); *Cascade Village, Colorado*, 48 FR 19917 (1983); and *Ellwood, California*, 50 FR 13031 (1985).

<sup>4</sup> In the event the dismissal of two conflicting applications at Wetumpka becomes final, Channel 248A may ultimately be used at Pike Road at a less restrictive site. See File Nos. BPH-921125ME and BPH-921125MG.

and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

8. Interested parties may file comments on or before **November 15, 1993**, and reply comments on or before **November 30, 1993**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner and his consultant, as follows:

Fred Randall Hughey  
Route 4, Box 247  
Tallassee, AL 36078

Kirk A. Tollett  
and Commsouth Media Assoc.  
4001 Highway 78 East  
Jasper, AL 35501  
(Consultant to Petitioner)

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

10. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

#### FEDERAL COMMUNICATIONS COMMISSION

Victoria M. McCauley  
Assistant Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

#### APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, **IT IS PROPOSED TO AMEND** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.